

HON. BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff

v.

SERVE ALL, HELP ALL, INC.

Defendants.

Case No.: 3:21-cv-05338-BHS

ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTERCLAIM

SERVE ALL, HELP ALL, INC., a
California non-profit corporation,

Counterclaimant

v.

NATHEN BARTON,

BARTON.

COMES NOW defendants SERVE ALL, HELP ALL, INC. and amends its answer to the
Second Amended Complaint

1 as follows: There are no paragraph numbers. Defendants respond to each paragraph in
2 order.

3 I. THE PARTIES TO THE COMPLAINT

4 Defendant lacks information on which to admit or deny the information in the first
5 paragraph and leaves Plaintiff to his proofs at trial.

6 Defendants admit the information in the second paragraph.

7 II. BASIS FOR JURISDICTION

8 Defendant lacks information on which to admit or deny the information in the first
9 paragraph and leaves Plaintiff to his proofs at trial.

10 If Plaintiff's assertions about his residence are correct, then the information in the
11 second paragraph would be admitted.

12 Defendant admits the allegations in the third paragraph.

13 Defendant admit the allegations in the fourth paragraph./

14 III. STATEMENT OF CLAIM

15 Defendant lacks information on which to admit or deny the information in the first paragraph
16 and leaves Plaintiff to his proofs at trial.

17 **Frequent Calls**

18 This paragraph appears to be introductory and a response would not be necessary.
19 However, Defendant lacks information on which to admit or deny the information in the first
20 paragraph and leaves Plaintiff to his proofs at trial.

21 Defendant admits its calling system leaves a voice mail message if there is no answer.

22 Defendant admits it called phone numbers in the 360 area code; however, defendants
23 lack information as to which (360) number Plaintiff refers to and whether that number is in
24
25

1 fact Plaintiff's, so defendants deny the rest of the paragraph at Page 2 lines 23-24..

2 Defendant admits it called phone numbers in the 360 area code between that time
3 frame; however, defendants lack information as to which (360) number Plaintiff refers to and
4 whether that number is in fact Plaintiff's, so defendants deny the rest of the paragraph at
5 Page 3 lines 1 through 3.

6 **First Documented Robocall – February 15, 2021**

7 Defendant admit their calling system using phone number (844) 622-2243 placed a
8 call to an area code 360 phone number on or about 1:40PM, February 15, 2021. The rest of
9 the first sentence is left to plaintiff's proof at trial. Defendant has no information as to
10 whether the phone number was registered to the Plaintiff.

11 Defendants cannot admit nor deny the information in the second paragraph so
12 defendant leaves plaintiff to his proofs at trial as to the allegations in the paragraph on page 3
13 lines 9 through 11.

14 Defendant admits the allegation in the third paragraph at page 3 lines 12-15.

15 Defendant lacks information to admit or deny the allegations in the paragraph at page
16 3 lines 16 though 19.

17
18 **SAHA Solicits Money**

19 Defendant admits it is a non profit and that Mr. Cotta sent an email requesting
20 documents but the rest of the paragraph at page 4 lines 4 through 8, defendant leaves plaintiff
21 to its proofs at trial.

22 Defendant admits that page 4 lines 14 are the contents of the email that is attached to
23 the complaint
24
25

1 Defendant denies page 4 lines 15 through 17. As a further defense, Defendant states
2 that the money requested is to pay third parties for the costs of credit reports which are
3 necessary for defendant's services and that was not a solicitation for services. Defendant
4 denies the remainder of that paragraph through line 19, and leave plaintiff to his proofs at
5 trial.

6 As to page 4 lines 20 though page 5 lines 4, the document speaks for itself therefore
7 Defendant neither admits nor denies. However by way of further defense. Defendant states
8 that Bay Balley Mortgage Group is a referral company nor does defendant have a direct
9 interest in that company.

10 Page 5 lines 8 though 14, defendant neither admits nor denies and leaves plaintiff to
11 his proofs at trial.

12 Defendants neither admit nor deny the allegations contained in Page 5 lines 15 through
13 19, as it appears to be opinion more than facts.

14 Defendant neither admits nor denies the allegations contained in page 5 lines 20
15 through 22 as it appears to be a conclusion and therefore leaves plaintiff to his proofs at trial.

16 Defendant denies the allegations contained in page 5 lines 23-24.

17 Defendant admits the allegations in page 6 lines 1 through 2. As a further response,
18 SAHA states that SAHA benefits in no way from the allegations in that sentence.

19 Defendant denies the allegations in Page 6 lines 3 through 5. As a further response,
20 SAHA has repeatedly informed plaintiff that there are no "owners" of the non profit.

21
22 **More Solicitations on Following Days**

23 Defendant cannot admit nor deny the allegations in page 6 lines 7 through 9 as there is
24 not a phone number listed and defendant is not in a position to know what number is or is not
25

1 Plaintiff's just by an area code; therefore, defendants leave plaintiff to his proofs at trial.

2 As a further defense, Defendant state that Plaintiff interacted with Defendant's agent
3 after receiving a call, requested information, and Plaintiff has admitted such in an email and in
4 his Complaint.

5 Defendant cannot admit nor deny the allegations in page 6 lines 10 through 12 and
6 therefore leave plaintiff to his proofs at trial.

7 Defendant denies the allegations contained in page 6 lines 13 through 24. As a further
8 response, Plaintiff himself recorded the original conversation and posted it on Youtube. He
9 provide that link in his original complaint. He did not seek permission to record that
10 conversation.

11 **Two More Robocalls on Following Days**

12 Defendant lacks information to admit or deny the allegations in page 7 lines 2 through
13 9 and therefore leaves plaintiff to his proofs. As further response, plaintiff's complaint does
14 not specify a number and therefore defendants have no idea which number plaintiff is
15 referring to.

16 Defendant denies the information contained in paragraph at page 7 line 9 through 11.

17 Defendant admits it uses an automatic dialer but whether that meets the definition of
18 the statute is a legal conclusion and therefore, as to that portion of the paragraph at page 7
19 liens 12 through 14, defendant leaves plaintiff to his proofs at trial.

20 **All of the Robocall Messages and Voices was Identical**

21 Defendants lack sufficient information to admit or deny the allegations in this section
22 and therefore leaves plaintiff to his proofs at trial. As a further response, plaintiff does not
23 identify what call, and part of this section contains a legal conclusion. As a further defense,
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1 defendant states that the recording on the Youtube page referred to by Plaintiff does state the
2 identity of the caller within the first 60 seconds. Additionally, upon research, Defendants
3 have discovered that at least one phone number and call referred to by Plaintiff was entered
4 into defendant's system with a reference and request to speak to someone other than Plaintiff,
5 that person is identified and that person was not Plaintiff.

6 **NACA and SAHA are Annoying the Public**

7 Defendant lacks information upon which to admit or deny the allegations in this
8 section and therefore leaves plaintiff to his proofs at trial. As a further response, part of this
9 section contains an opinion or conclusion rather than facts, and Plaintiff fails to identify the
10 phone number in question.

11 **IV. RELIEF**

12 Defendants deny the allegation in this entire section and leaves Plaintiff to his proofs
13 at trial

14 **DEFENSES**

15 Defendant SAHA., asserts the following defenses

16 **1. Ambiguity**

17 Defendants assert the plaintiff did not clearly state the issues in this case, making it
18 difficult for these answering defendants to fully respond, and therefore ask this Court for leave
19 to amend this answer to assert additional defenses once information is discovered that would
20 allow defenses to be known.

21 **2. Failure to State a Claim Upon Which Relief Can Be Granted**

22 Plaintiff's complaint fails to state a claim upon which relief can be granted against this
23 Defendant.
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1 3. Standing

2 Mr. Barton does not have standing to bring the claims asserted.

3 4. Bad Faith

4 Mr. Barton has fraudulently manufactured lawsuits with the intent of obtaining money
5 through the misuse of the TCPA and currently has nine active federal cases, which defendant
6 believes shows bad faith. Mr. Barton is not the type of plaintiff the law was created to protect
7 and therefore, lacks Article III standing to even bring the lawsuit. See *Stoops v. Wells Fargo*
8 *Bank, N.A.*, 197 F. Supp.3d 782 (W.D. Pa. 2016).

9 5. Fraud

10 These answering defendants assert that plaintiff or plaintiff's assignee used fraud,
11 deceit or misrepresentation to invite the contact

12 6. Unclean Hands

13 These answering defendant assert that plaintiff or plaintiff's assignee committed a
14 wrongful act and/or fraud and/or misrepresentation and is attempting to benefit from those
15 acts through this lawsuit.

16 7. Failure to Mitigate

17 Defendant assert that neither plaintiff nor plaintiff's assignee on plaintiff's behalf to
18 mitigate his damages.

19 8. Mistake

20 The information that Defendant received for its automatic calling system was provided
21 by a third party. The information referenced another person who previously had a phone
22 number which had been reassigned to Plaintiff in a short period of time after Defendant
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1 obtained that information, which defendant believes is the phone number in question in this
2 litigation.

3 **ADDITIONAL FACTS FOR DEFENSES:**

4 Plaintiff, or someone acting at Plaintiff's direction, posted on Youtube at
5 <https://www.youtube.com/watch?v=b4ZBxSyDvdg> a recording of part of a phone call
6 wherein the caller identifies himself as Nathan Barton. The posting captures the beginning of
7 the phone call, where you can hear the caller select options and be connected to a live person
8 who immediately identifies "Non Profit Alliance" and then through the 8 minute phone call,
9 the caller identifies himself as Nathan Barton and provides a phone number with a 360 area
10 code and a phone number with a 947 area code as well as his email and address.

11 Any contact after selecting to be connected with a live person is invited contact. Any
12 calls after that, are invited as Mr. Barton himself provided his information to the
13 representative.

14
15 AND NOW having answered the allegations of the Complaint and having pled
16 affirmatively, these answering defendants deny that Plaintiff is entitled to any relief and
17 demands that the Complaint be dismissed at Plaintiff's cost.

18 **COUNTERCLAIM**

19
20 SERVE ALL, HELP ALL, INC., a California 503(c) corporation, files this
21 Counterclaim against NATHAN BARTON ("BARTON"), an in support of its individual and
22 collective Causes of Action state:

23 **I. PARTIES**
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1 1.1 Counterclaimant SERVE ALL, HELP ALL, INC. is a California 503 (c)
2 corporation, with is primary location in Santa Ana, California. (Hereinafter referred to as
3 “SAHA”)

4 1.2 BARTON NATHEN BARTON, is an individual, residing in Clark County,
5 Washington.

6 **II. JURISDICTION AND VENUE**

7
8 2.1 The original complaint was filed in this venue and jurisdiction.

9 **III. ADDITIONAL FACTS**

10 3.1 SAHA received marketing information from third parties regarding individuals
11 who were facing foreclosures which includes the name, address and associated phone
12 numbers.

13 3.2 SAHA programs that information into its auto dialer.

14 3.3 SAHA also receives information from websites where people enter their
15 information to receive help with foreclosures. That information includes name and phone
16 number.

17 3.4 SAHA is informed and believes and thereon allege that Counterdefendant
18 NATHEN BARTON in or about February opted into a marketing campaign to receive
19 communication from an entity operated or represented by the Counterclaimants or one of its
20 affiliates.

21 3.5 Counterdefendant NATHEN BARTON opted in to receive information from
22 SAHA or one of their affiliates by providing his phone number. Unfortunately, the
23 Complaint does not specify which number that is.
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1 3.6 SAHA and their affiliates retain information and regarding the IP address of
2 individuals that interact with its websites.

3 3.7 SAHA is informed and believe and thereon allege that Counterdefendant
4 NATHEN BARTON provided a fake name when he provided his phone number on the
5 website when opting in to receive information.

6 3.8 BARTON opted in, gave false information, and then waited for contact

7 3.9 Alternatively, SAHA believes that it received information from one if its
8 marketing affiliates regarding the name and associated phone numbers for an address being
9 foreclosure upon and either NATHEN BARTON was assigned one of the phone number
10 associated with that address as the number had been recently re-assigned.

11 3.10 Upon receiving the auto-dialed phone call, rather than hanging up or selecting
12 the option to remove his number BARTON opted to contact SAHA.

13 3.11 Once interacting with SAHA's agent, BARTON supplied his name, phone
14 number and email so that he could further receive information.

15 3.12 BARTON made no attempt to inform SAHA that the number was not
16 associated with the person asked for in the phone call.

17 3.13 BARTON had no interest in the information he agreed to receive from SAHA.

18 3.14 In BARTON'S original complaint, which as since been amended twice, he
19 listed a link to a Youtube posting wherein BARTON can be heard selecting the option to
20 speak to someone and engaging a live person on the other end of the call.

21 3.15 BARTON himself, or someone acting on his behalf, recorded the conversation.
22 Not only that, BARTON has provided his own evidence as to what occurred on that call,
23 that allegedly occurred on February 15, 2021. On that call, you can hear the live person
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1 identify “Non Profit Alliance. How may I help you?” within seconds of the call being
2 connected.

3 3.16 In that conversation, BARTON provides his name, his son’s cell phone number
4 and BARTON’s own cell phone number as well as his address to the representative.

5 3.17 SAHA is informed and believes and thereon alleges that Counterdefendant
6 NATHEN BARTON opted in with the intent to engage Counterclaimants and their affiliates
7 in actions that BARTON intended to use to file lawsuits for violating the TCPA.

8 3.18 SAHA is informed and believe and thereon alleges that Counterdefendant
9 NATHEN BARTON had a scheme to “get rid of robocalls” and purposely sought out
10 businesses to sue for his own personal financial gain.

11 3.19 SAHA was contacted by BARTON who engaged with SAHA and consented to
12 SAHA and its representatives to engage with him for service offered.

13 3.20 SAHA received an email from BARTON after consenting to receive
14 information which stated “I am sorry, I am not really interested in loan modification. A
15 couple of days ago I got an illegal robocall and I played along to see who it was and
16 unfortunately, it was you folks. I have a mission to get rid of robocalls... if you folks would
17 like to talk it over, I am willing. Otherwise within a few weeks I will be down there for
18 your company.”

19 3.21 BARTON has filed at least nine similar lawsuits in this and other courts,
20 alleging similar actions.

21 3.22 BARTON is using the TCPA as a means to make a profit.

22 3.23 BARTON is using the TCPA to harass business owners, and specifically
23 SAHA
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1 3.24 BARTON is using the TCPA as a means to extort money from SAHA.

2 3.25 BARTON has admitted that other companies “simply pay him to go away.”

3 3.26 BARTON has a pattern of such acts which form the bases of at least two other
4 lawsuits – one involving Lead Point and one involving Joe Delfgauw.

5 **IV. CAUSE OF ACTION – FRAUD**

6 4.1 SAHA repeat and reallege the allegations set forth in paragraphs 1.1 through
7 3.25

8 4.2 SAHA is informed and believes and thereon alleges that BARTON used a false
9 name when opting-in.

10 4.3 Alternatively, SAHA is informed and believes and thereon alleges that
11 BARTON used a phone he recently purchased and using information in that phone,
12 responded to solicitations meant for the previous owner of the phone number.

13 4.4 SAHA is informed and believes and thereon alleges that BARTON filed a
14 complaint alleging actions involving a phone number but only stated an area code, for the
15 purpose of hiding the phone number involved so that his true actions could not be traced.

16 4.5 SAHA is informed and believes and thereon alleges that BARTON falsely
17 represented this information for the purpose of showing that the messages he received were
18 unsolicited.

19 4.6 SAHA is informed and believes and thereon alleges that BARTON represented
20 himself using a false name when he opted-in and to represent to the court in his lawsuit that
21 he had never opted in to receive information, and to induce Counterclaimants (and other
22 businesses) to believe BARTON was interested in the communication.
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1 4.7 SAHA is informed and believes and thereon alleges that BARTON opted in on
2 a call on February 15, 2021.

3 4.8 SAHA is informed and believe and thereon alleges that BARTON did these
4 actions complained of to further his mission to “take down robocallers”.

5 4.9 SAHA is informed and believes and thereon alleges that BARTON’s
6 motivation for this is for his own economic gain, through a plan that the defendants in his
7 cases will simply pay him rather than defend.

8 4.10 SAHA is informed and believe and thereon alleges that when BARTON made
9 these representations, he knew they were false.

10 4.11 SAHA is informed and believes and thereon alleges that when BARTON made
11 this representation he did so with the intent that Counterclaimants would act on it.

12 4.12 Counterclaimants took their actions in reliance on BARTON’s representations,
13 including emailing him and making phone calls subsequent to February 15, 2021.

14 4.13 SAHA is informed and believes and thereon alleges that BARTON took the
15 actions complained of in the hopes that SAHA would pay money to him rather than defend
16 the action.

17 4.14 SAHA expended both employee time, attorneys fees, and other resources to
18 fulfill its contractual obligations based on BARTON’s actions
19

20 **V. CAUSE OF ACTION -FRAUD BY NONDISCLOSURE**

21
22 5.1 SAHA repeats and realleges the allegations set forth in paragraphs 1.1 through
23 4.13

24 5.2 SAHA is informed and believe and thereon allege that when BARTON knew
25 or had reason to know that prior to his lawsuit, he affirmatively gave Counterclaimants

1 and/or third parties consent to receive text messages and phone calls from Counterclaimants’
2 and third party providers. BARTON took no action to correct that opt-in information

3 5.3 To the extent that BARTON did not wish to receive text messages and/or
4 phone calls at the alleged 360 phone number, he intentionally concealed from or failed to
5 disclose that fact to Counterclaimants. Because BARTON was the person with the most
6 knowledge related to whether he wished to receive text messages and phone calls at his
7 phone number, and because he was well aware of potential liability under the TCPA (based
8 on his multiple lawsuits), BARTON had a duty to disclose to SAHA his desire not to receive
9 such contact.

10 5.4 BARTON’s failure to disclose his desire to not receive text messages and
11 phone calls was material because he knew that Counterclaimants had received an opt-in
12 notice from BARTON for the alleged phone number

13 5.5 By failing to disclose his desire to not receive text messages and phone calls
14 BARTON intended SAHA to fulfill their contractual obligation with third parties who would
15 then send BARTON text messages that all believed had been requested by BARTON.
16

17 5.6 Despite knowing about BARTON’s opt-in and failure to disclose to SAHA that
18 BARTON did not want to receive text messages or phone calls, BARTON claimed that those
19 messages were “unsolicited” in his lawsuit

20 5.7 Knowing BARTON had no intention of seeking SAHA’s services BARTON
21 purposely engaged SAHA from one of its solicitations and caused SAHA to further interact
22 with BARTON.

23 5.8 SAHA expended both employee time, attorneys fees, and other resources to
24 fulfill its contractual obligations based on BARTON’s failure to disclose.
25

CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION

6.1 SAHA repeats and realleges the allegations set forth in paragraphs 1.1 through 5.8

6.2 BARTON supplied information to SAHA to entice SAHA to act on it, namely to contact him for services.

6.3 BARTON had no intention of seeking the services provided by SAHA and its agents.

6.4 BARTON knew or should have known that the information was supplied to SAHA for the purpose of engaging them in a business transaction

6.5 BARTON, if not purposeful, was negligent in communicating that information

6.6 BARTON knew or should have known that SAHA would rely on the information being provided for a business transaction

6.7 BARTON knew or should have known that in receiving such contact information from BARTON, that SAHA or its agents would contact BARTON seeking to engage in a business transaction.

6.8 BARTON knew at the time he provided that information that BARTON did not intent on entering into a business transition.

6.9 BARTON knew or should have known that SAHA's reliance on receiving contact information from BARTON was reasonable.

6.10 BARTON knew or should have known that giving SAHA his contact information when he did not intend to enter into a business transaction with SAHA damaged SAHA as set forth herein.

CONCLUSION AND REQUEST FOR RELIEF

Counterclaimants request that the Court enter a judgment that BARTON is liable for common-law fraud and fraud by non-disclosure, negligent misrepresentation and award Counterclaimants' actual damages, exemplary damages, interest, costs, attorneys' fees and all other relief that this Court finds fair and just.

DATED: April 5, 2022

s/Donna Gibson
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VERIFICATION

I, Purandar Amin, am the President of SERVE ALL, HELP ALL, INC.. I declare that I have reviewed the above Amended Answer and Counterclaim and that the facts contained herein are true and correct to the best of my knowledge and belief.

Purandar Amin